

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 74

Introduced by Assembly Member Chesbro
(Principal coauthor: Assembly Member Nielsen)
(Coauthor: Senator Wiggins)

December 16, 2008

An act to add Sections ~~12670.22 and 12670.23 to~~ 12645, 12646, 12647, 12670.22, and 12670.23 to, and to add the heading of Article 2 (commencing with Section 12645) to Chapter 2 of, and to repeal the heading of Article 2 (commencing with Section 12648) of Chapter 2 of, Part 6 of Division 6 of, the Water Code, relating to flood control.

LEGISLATIVE COUNSEL'S DIGEST

AB 74, as amended, Chesbro. *Flood control: Middle Creek and Hamilton City Flood Damage Reduction and Ecosystem Restoration Projects.*

(1) Existing law provides for state cooperation with the federal government in the construction of specified flood control projects.

This bill, *with a certain exception*, would provide that specified provisions of law that authorize financial assistance to flood control projects in the Sacramento-San Joaquin Watersheds shall not be construed to expand the liability of the state for the operation and maintenance of any flood management facility that is outside the scope of a designated state plan of flood control. The bill would ~~adopt and~~ authorize the state to provide subvention funds for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project in Lake

County and the Hamilton City Flood Damage Reduction and Ecosystem Restoration Project in Glenn County, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendations and advice of the Central Valley Flood Protection Board. The bill would require the Lake County Watershed Protection District and Reclamation District No. 2140 to carry out those respective projects and to give prescribed assurances to the Secretary of the Army, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The heading of Article 2 (commencing with*
2 *Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water*
3 *Code is repealed.*

4
5 ~~*Article 2. Projects in the Sacramento-San Joaquin Watersheds*~~
6

7 *SEC. 2. The heading of Article 2 (commencing with Section*
8 *12645) is added to Chapter 2 of Part 6 of Division 6 of the Water*
9 *Code, to read:*

10
11 *Article 2. Projects in the Sacramento-San Joaquin Watersheds*
12

13 *SEC. 3. Section 12645 is added to the Water Code, to read:*
14 *12645. The Legislature finds and declares all of the following:*

15 *(a) In 1911, the Legislature adopted a flood control plan for*
16 *the Sacramento Valley proposed by the federal California Debris*
17 *Commission and created the Reclamation Board to implement the*
18 *plan, working with the federal government. The state's adoption*
19 *of a valley-wide flood management plan was intended to counteract*
20 *local flood control projects that conflicted with each other, in what*
21 *has been called "dog-eat-dog reclamation." Six years later,*

1 *California gained Congressional authorization for the United*
 2 *States Army Corps of Engineers (Corps) to collaborate with the*
 3 *state in building and maintaining the Sacramento River Flood*
 4 *Control Project.*

5 *(b) For most of the 20th century, the state and federal*
 6 *governments built or rebuilt levees, weirs, and bypasses to increase*
 7 *conveyance of flood waters downstream. The Sacramento River*
 8 *Flood Control Project and the federal-state flood control project*
 9 *in the San Joaquin Valley include approximately 1,600 miles of*
 10 *levees and other facilities to reduce central valley flood risk, now*
 11 *defined as the State Plan of Flood Control in subdivision (j) of*
 12 *Section 5096.805 of the Public Resources Code. The Corps often*
 13 *constructed the federal “project levees” in both the Sacramento*
 14 *and San Joaquin Basin from already existing private levees. In*
 15 *1953, the federal government transferred the Sacramento River*
 16 *Flood Control Project to the state, which in turn passed*
 17 *responsibility for operation and maintenance to local reclamation*
 18 *districts.*

19 *(c) In 2003, a state Court of Appeal in Paterno v. State of*
 20 *California (2003) 113 Cal.App.4th 998, highlighted the liability*
 21 *risks the state faces from failed levees. The Paterno court held the*
 22 *state liable for failure of a levee that was generally operated and*
 23 *maintained by a local levee maintenance district. The state’s*
 24 *liability was substantial because homes and a shopping center*
 25 *were built behind the levee and suffered from the resulting flood.*

26 *(d) Up to the time of the Paterno decision, the state authorized*
 27 *funding for various flood control projects in the Sacramento-San*
 28 *Joaquin River watershed. These statutory authorizations included*
 29 *varying provisions regarding responsibility and liability for*
 30 *operation and maintenance of the flood control facilities, and may*
 31 *or may not have incorporated the specified facilities into the*
 32 *federal-state Sacramento River or San Joaquin River flood control*
 33 *projects. After the court ruling in Paterno, the status of each flood*
 34 *facility became critically important to determining liability, and*
 35 *legal ambiguities led to questions about whether particular*
 36 *facilities were incorporated into a federal -state flood control*
 37 *project. In some cases, despite a location between two project*
 38 *levees, certain levees remain outside the jurisdiction of a*
 39 *federal-state flood control project, with local agencies retaining*
 40 *liability.*

(e) In 2006, California voters approved the Disaster Preparedness and Flood Prevention Bond Act of 2006, which authorized the issuance of general obligation bonds in the amount of \$4.9 billion for flood protection and defined the federal-state flood control project as the “State Plan of Flood Control.” The following year, the Legislature passed a package of bills to reform state flood protection policy in the central valley. These laws required the Department of Water Resources to develop, and the Central Valley Flood Protection Board to adopt, a Central Valley Flood Protection Plan, which is broader than the State Plan of Flood Control, affecting the entire watersheds of the Sacramento and San Joaquin Valley. These laws addressed state liability for central valley flood control facilities, ensuring that the state’s liability was limited to facilities identified in the State Plan of Flood Control. These laws did not specifically address the facilities described in this article.

SEC. 4. Section 12646 is added to the Water Code, to read:

12646. Unless the context requires otherwise, the definitions set forth in this section govern the construction of this chapter.

(a) “Board” means the Central Valley Flood Protection Board.

(b) “Plan” means the Central Valley Flood Protection Plan.

(c) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(d) “Public safety infrastructure” means public safety infrastructure necessary to respond to a flood emergency, including, but not limited to, street and highway evacuation routes, public utilities necessary for public health and safety, including drinking water and wastewater treatment facilities, and hospitals.

(e) “Sacramento-San Joaquin Valley” means any lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom. The Sacramento-San Joaquin Valley does not include lands lying within the Tulare Lake basin, including the Kings River.

(f) “State Plan of Flood Control” has the meaning set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

SEC. 5. Section 12647 is added to the Water Code, to read:

12647. (a) The state shall not have responsibility or liability for the operation and maintenance of central valley flood control

1 facilities identified in this article unless one or more of the
2 following applies:

3 (1) The department identifies the facility as part of the State
4 Plan of Flood Control.

5 (2) The state has explicitly accepted the transfer of liability for
6 the facility from the federal government.

7 (3) Board incorporates the facility into the State Plan of Flood
8 Control pursuant to Section 9611.

9 (b) Unless otherwise specifically provided, nothing in this article
10 shall be construed to expand the liability of the state for the
11 operation or maintenance of any flood management facility outside
12 the scope of the State Plan of Flood Control, except as specifically
13 determined by the board pursuant to Section 9611.

14 (c) Use of the phrase “adopted and authorized” in this article
15 does not, by itself, reflect incorporation of the specified facility
16 into the State Plan of Flood Control or assumption of liability by
17 the state, unless one of the conditions described in subdivision (a)
18 applies to the facility.

19 SEC. 6. Section 12670.22 is added to the Water Code, to read:

20 12670.22. (a) The state may provide subvention funds for the
21 Middle Creek Flood Damage Reduction and Ecosystem Restoration
22 Project in Lake County substantially in accordance with the Flood
23 Damage Reduction and Environmental Restoration, Middle Creek,
24 Lake County, California: Report of the Chief of Engineers of the
25 United States Army Corps of Engineers dated November 29, 2004,
26 and as authorized by the federal Water Resources Development
27 Act of 2007 (Public Law 110-114), at an estimated cost to the state
28 of the sum that may be appropriated for state cooperation by the
29 Legislature upon the recommendations and advice of the Central
30 Valley Flood Protection Board.

31 (b) The Lake County Watershed Protection District shall give
32 assurances satisfactory to the Secretary of the Army that the local
33 cooperation required by federal law will be furnished by the district
34 in connection with the project.

35 (c) Lake County Watershed Protection District, in conjunction
36 with the Department of the Army, shall carry out the plans and
37 project and may make modifications and amendments to the plans
38 as may be required by state or federal law.

39 SEC. 7. Section 12670.23 is added to the Water Code, to read:

1 12670.23. (a) *The state may provide subvention funds for the*
2 *Hamilton City Flood Damage Reduction and Ecosystem*
3 *Restoration Project in Glenn County substantially in accordance*
4 *with the Hamilton City Flood Damage Reduction and Ecosystem*
5 *Restoration, Glenn County, California: Report of the Chief of*
6 *Engineers of the United States Army Corps of Engineers dated*
7 *December 22, 2004, and authorized by the federal Water Resources*
8 *Development Act of 2007(Public Law 110-114), at an estimated*
9 *cost to the state of the sum that may be appropriated for state*
10 *cooperation by the Legislature upon the recommendations and*
11 *advice of the Central Valley Flood Protection Board.*

12 (b) *Reclamation District No. 2140 shall give assurances*
13 *satisfactory to the Secretary of the Army that the local cooperation*
14 *required by federal law will be furnished by the district in*
15 *connection with the project.*

16 (c) *Reclamation District No. 2140, in conjunction with the*
17 *Department of the Army, shall carry out the plans and project and*
18 *may make modifications and amendments to the plans as may be*
19 *required by federal or state law.*

20 SEC. 8. *No reimbursement is required by this act pursuant to*
21 *Section 6 of Article XIII B of the California Constitution because*
22 *the only costs that may be incurred by a local agency or school*
23 *district are the result of a program for which legislative authority*
24 *was requested by that local agency or school district, within the*
25 *meaning of Section 17556 of the Government Code and Section 6*
26 *of Article XIII B of the California Constitution.*

27 SECTION 1. ~~Section 12670.22 is added to the Water Code, to~~
28 ~~read:~~

29 ~~12670.22. (a) The Middle Creek Flood Damage Reduction~~
30 ~~and Ecosystem Restoration Project in Lake County is adopted and~~
31 ~~authorized substantially in accordance with the draft final project~~
32 ~~modification report of the Chief of Engineers of the United States~~
33 ~~Army Corps of Engineers, at an estimated cost to the state of the~~
34 ~~sum that may be appropriated for state cooperation by the~~
35 ~~Legislature upon the recommendations and advice of the Central~~
36 ~~Valley Flood Protection Board.~~

37 ~~(b) The Lake County Watershed Protection District shall give~~
38 ~~assurances satisfactory to the Secretary of the Army that the local~~
39 ~~cooperation required by federal law will be furnished by the district~~

1 in connection with the project adopted and authorized in
2 subdivision (a):

3 (e) The district, in conjunction with the Department of the Army,
4 shall carry out the plans and project and may make modifications
5 and amendments to the plans as may be necessary to carry out the
6 plans for the purposes of Chapter 1 (commencing with Section
7 12570) and this chapter.

8 SEC. 2. Section 12670.23 is added to the Water Code, to read:

9 12670.23. (a) The Hamilton City Flood Damage Reduction
10 and Ecosystem Restoration Project in Glenn County is adopted
11 and authorized substantially in accordance with the Hamilton City
12 Flood Damage Reduction and Ecosystem Restoration, California,
13 Final Feasibility Report and Environment
14 Impact/Statement/Environmental Impact Report, dated July 2004
15 of the Chief of Engineers of the United States Army Corps of
16 Engineers, at an estimated cost to the state of the sum that may be
17 appropriated for state cooperation by the Legislature upon the
18 recommendations and advise of the Central Valley Flood Protection
19 Board.

20 (b) Reclamation District No. 2140 shall give assurances
21 satisfactory to the Secretary of the Army that the local corporation
22 required by federal law will be furnished by the district in
23 connection with the project adopted and authorized in subdivision
24 (a).

25 (e) The district, in conjunction with the Department of the Army,
26 shall carry out the plans and projects and may make modifications
27 and amendments to the plans as may be necessary to carry out the
28 plans for the purposes of Chapter 1 (commencing with Section
29 12570) and this chapter.

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district are the result of a program for which legislative authority
34 was requested by that local agency or school district, within the
35 meaning of Section 17556 of the Government Code and Section
36 6 of Article XIII B of the California Constitution.